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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

WESTERN ORGANIZATION OF
RESOURCE COUNCILS et al.,

Plaintiffs,

vs.

UNITED STATES BUREAU OF
LAND MANAGEMENT,

Defendant,

and

STATE OF WYOMING,

Intervenor-Defendant.

Case No. 4:20-cv-00076-BMM

**DECLARATION OF SHILOH
HERNANDEZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR
COSTS AND ATTORNEYS' FEES**

I, Shiloh Hernandez, hereby declare:

1. I am a senior attorney with Earthjustice's Northern Rockies Office in Bozeman, Montana. I served as counsel in the above-captioned case. I submit this declaration in support of Plaintiffs' application for an award of attorneys' fees and costs sought pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, incurred in commencing and prosecuting this matter against Federal Defendant (BLM).

2. I have contacted each of the Plaintiffs regarding their satisfaction of the eligibility requirements for an award of fees under EAJA. Plaintiffs Montana Environmental Information Center, Northern Plains Resource Council, Powder River Basin Resource Council, Center for Biological Diversity, and WildEarth Guardians meet EAJA's eligibility requirements because they were exempt from taxation under § 503(c)(3) of the Internal Revenue Code and had fewer than 500 employees at the time the complaint in this case was filed.

3. Plaintiffs Western Organization of Resource Councils had fewer than 500 employees and had a new worth that did not exceed \$7,000,000 at the time the complaint was filed.

4. Plaintiff Sierra Club does not meet EAJA's eligibility requirements. However, this litigation would have been pursued by the EAJA-eligible Plaintiffs

without the participation of Sierra Club. Plaintiffs do not seek recovery for time incurred by Nathaniel Shoaff, who represented the Sierra Club.

5. As counsel in this matter, I conducted work on all aspects of this case, including, but is not limited to, researching and developing the legal theories, meeting and discussing the matter with Plaintiffs, reviewing the administrative record, drafting and filing briefs, and assisting with oral argument preparation.

6. To file this motion, I compiled the hours that I spent on this matter, which are reflected in the attached timesheets and costs and expenses (Exhibit A). I recorded time in increments of six minutes (1/10 of an hour). My time and expense reports for this case were kept contemporaneously and accurately reflect the actual time spent and expenses incurred.

7. In exercising sound billing judgment, I carefully reviewed my time sheets and omitted excessive, redundant, and otherwise unnecessary time. In my opinion, the total hours, expenses, and award sought in this matter are reasonable. In total, my exercise of billing judgment eliminated 30.7 hours of my time spent on this matter. Accordingly, I seek to recover fees for 224.5 hours of my time spent on this matter.

8. In my experience practicing public-interest environmental law, I know that cases of this type are time-consuming, complex, and difficult. I also know that people who seek attorneys to take these cases often do not have the resources to

hire a private attorney and have difficulty finding able and experienced attorneys willing to take such cases on a pro bono basis. Plaintiffs in this case could not have obtained an attorney with the ability to successfully litigate this case at the EAJA statutory rate.

9. I graduated from Vermont Law School in 2008. While attending law school I took classes on administrative law, environmental law, and energy law, among others, and completed 17 credits toward a master's degree in studies in environmental law. I was a member of the Vermont Law Review. In law school I interned for a semester at the U.S. Environmental Protection Agency where I worked on cases related to coal mining pollution. I published a student article in the Vermont Law Review on transboundary impacts of pollution from proposed coal mining on the North Fork of the Flathead River in Canada. I also clerked with Earthjustice where I researched legal regimes governing the impacts of climate change.

10. After law school, I clerked for the Honorable Mike Salvagni in the 18th Judicial District Court of Montana, in Bozeman, and then for the Honorable William Leaphart on the Montana Supreme Court. I joined the Western Environmental Law Center in 2011, where I focused on public lands and climate-change-related litigation. I have presented on continuing legal education panels on environmental law, often on issues related to coal litigation.

11. I have represented clients in numerous environmental cases pursued under various state and federal statutes, including the National Environmental Policy Act, the Clean Water Act, the Surface Mining Control and Reclamation Act, and the Administrative Procedure Act. These cases include the following: *350 Montana v. Haaland*, 50 F.4th 1254 (9th Cir. 2022) (holding analysis of coal mine violated NEPA); *Mont. Env't Info. Ctr. v. Haaland*, CV 19-130, 2022 WL 4592071 (D. Mont. Sept. 30, 2022) (holding approval of coal mine violated NEPA); *WildEarth Guardians v. Bernhardt*, No. CV 17-80-BLG-SPW, 2021 WL 363955, at *1 (D. Mont. Feb. 3, 2021) (holding analysis for coal mine expansion violated NEPA); *WildEarth Guardians v. Bernhardt*, 502 F. Supp. 3d 237, 259 (D.D.C. 2020) (holding oil and gas leases violated NEPA); *WildEarth Guardians v. BLM*, 457 F. Supp. 3d 880 (D. Mont. 2020) (holding oil and gas leases violated NEPA); *Mont. Envtl. Info. Ctr. v. OSM*, 274 F. Supp. 3d 1074 (D. Mont. 2017) (holding analysis for coal mine expansion violated NEPA); *WORC v. BLM*, No. CV 16-21-GF-BMM, 2018 WL 1475470 (D. Mont. Mar. 26, 2018) (finding environmental review of land use plans unlawful under NEPA); *Diné Citizens Against Ruining Our Environment v. OSM*, 82 F. Supp. 3d 1201 (D. Colo. 2015), *vacated as moot* 643 Fed. App'x, 799 (10th Cir. 2016) (finding environmental review of coal mine inadequate); *Diné Citizens Against Ruining Our Environment*, 2015 WL 1593995 (D. Colo. Apr. 6, 2015) (vacating mine expansion); *Diné Citizens Against Ruining*

Our Environment v. OSM, 2013 WL 11323877 (D. Colo. Jan. 4, 2013) (denying motion to dismiss on sovereign immunity grounds); *Mont. Envtl. Info. Ctr. v. BLM*, 615 Fed. App'x 431 (9th Cir. 2015) (finding standing to raise climate change claims related to oil and gas leases); *California v. BLM*, No. 17-cv-3804-EDL, 2017 WL 4416409 (N.D. Cal. Oct. 4, 2017) (ruling that Department of Interior unlawfully postponed rule limiting oil and gas waste from venting, flaring, and leaks) (co-counsel) *Greater Yellowstone Coal. v. USFS*, 12 F. Supp. 3d 1268 (D. Idaho 2014) (finding environmental review of motorized trail adjacent to proposed wilderness inadequate); *In re Bull Mountains Mine*, No. BER 2013-07 SM (Jan. 14, 2014) (finding Montana Department of Environmental Review acted unlawfully under Montana Strip and Underground Mine Reclamation Act).

12. Through my legal education in law school and more than a decade of exclusive practice in the field, I have developed distinctive knowledge and skills related to the specialized area of environmental litigation, in particular, litigation related specifically to coal mining, climate change, and greenhouse gas emissions. Based on my distinctive knowledge and skills, and rates other attorneys have sought and obtained in similar cases, I am seeking rates from \$330 to \$350 per hour in this case. I am familiar with the hourly rates for attorneys who practice environmental law in Montana. I have discussed rates with other attorneys and have reviewed published cases from the District of Montana and the Montana

Supreme Court on attorneys' fees for environmental litigation. I believe my requested rates in this case are reasonable and consistent with, if not lower than, the market rates for attorneys with similar skills and experience in Montana. I have previously been awarded fees at a rate of \$350 per hour in *Montana Environmental Information Center v. Montana Department of Environmental Quality*, No. DV 2019-34, slip op. at 27 (Mont. 16th Jud. Dist. Ct. May 13, 2022).

Pursuant to 28 U.S.C. § 1748, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 23rd day of December, 2022.

/s/ Shiloh Hernandez
Shiloh Hernandez

Exhibit A. Recorded Time of Shiloh Hernandez

Date	Attorney	Description	Rate	Time	Omit	Amount
5/22/20	Hernandez	MT/WY RMP remand reviewing SEIS 1, call N. Shoaff re same .5, call E. Shlenker-Goodrich/K. Tisdel re same 1, client call 1,	330.00	7.50		2,475.00
6/2/20	Hernandez	reviewing RMP litigation memo--MCFO/BFO remand	330.00	1.00		330.00
6/3/20	Hernandez	RMP litigation memo reviewing MCFO/BFO	330.00	1.00		330.00
8/13/20	Hernandez	PRB RMP II drafting complaint: 5.5	330.00	5.50		1,815.00
8/24/20	Hernandez	PRB RMP complaint 3.7, email to clients .4 re complaint	330.00	4.10		1,353.00
8/25/20	Hernandez	PRB RMP editing complaint	330.00	2.00		660.00
8/26/20	Hernandez	PRB RMP 2.0 - drafting complaint .7, filing .2, email clients .5	330.00	1.40		462.00
9/15/20	Hernandez	PRB briefing 2.0 - corp discl, PHV	330.00	1.50		495.00
11/19/20	Hernandez	email N. Shoaff, M. Hornbein re motion to dismiss	330.00	0.50		165.00
11/24/20	Hernandez	reviewing motion to dismiss re venue	330.00	1.00		330.00
11/24/20	Hernandez	reviewing motion to dismiss	330.00	1.00		330.00
11/25/20	Hernandez	email clients re MTD .5, reviewing MTD 2, rsch response 3	330.00	5.50		1,815.00
11/30/20	Hernandez	reviewing motion to dismiss	330.00	2.50		825.00
12/2/20	Hernandez	call MS/TM re sturgeon claim	330.00	1.00	1.00	-
12/4/20	Hernandez	drafting amended complaint 1.5; email NS/MH re same .1	330.00	1.60		528.00
12/14/20	Hernandez	amending complaint	330.00	0.50		165.00
1/11/21	Hernandez	reviewing motion to dismiss/transfer	340.00	2.50		850.00
1/11/21	Hernandez	rsching resp to MTD	340.00	1.50		510.00
1/12/21	Hernandez	review MTD outlining resp .7, email clients .3; rsching response .8	340.00	1.80		612.00
1/19/21	Hernandez	reviewing motion to change venue and outlining resp 3.2, 3.4	340.00	6.60		2,244.00
1/20/21	Hernandez	drafting resp to MTD 3, 3.5	340.00	6.50		2,210.00
1/20/21	Hernandez	drafting resp to MTD 4, 4	340.00	8.00		2,720.00
1/23/21	Hernandez	drafting resp to MTD	340.00	4.00		1,360.00
1/25/21	Hernandez	drafting resp to MTD 2, 3.5	340.00	5.50		1,870.00
1/26/21	Hernandez	call NS MH re MTD	340.00	1.00		340.00
1/28/21	Hernandez	drafting/editing MTD 2, emails NS/MH re same .2	340.00	2.20		748.00
1/29/21	Hernandez	research Sturgeon ESA claim	340.00	1.00	1.00	-
2/12/21	Hernandez	call NS re sturgeon 1, reviewing MTD .5	340.00	1.50	1.50	-
2/12/21	Hernandez	drafting reply 2, 2	340.00	4.00		1,360.00
2/12/21	Hernandez	DC Cir bar application	340.00	1.00	1.00	-
2/15/21	Hernandez	hearing prep for MTD hearing 3.5, 4	340.00	7.50		2,550.00
2/16/21	Hernandez	moot for MH	340.00	1.00		340.00
3/1/21	Hernandez	reviewing ESA claim sturgeon	340.00	2.00	2.00	-
3/5/21	Hernandez	call MG re sturgeon	340.00	0.90	0.90	-
3/7/21	Hernandez	drafting NOI sturgeon	340.00	2.50	2.50	-
3/8/21	Hernandez	drafting NOI	340.00	4.00	4.00	-
3/12/21	Hernandez	reviewing NOI 1.5; client call re sturgeon claim 1	340.00	2.50	2.50	-

Date	Attorney	Description	Rate	Time	Omit	Amount
3/18/21	Hernandez	revising complaint	340.00	1.00		340.00
3/23/21	Hernandez	client call re NOI/ESA	340.00	0.70	0.70	-
8/6/21	Hernandez	rev AR	340.00	2.00		680.00
8/12/21	Hernandez	motion for extension .5	340.00	0.50		170.00
8/12/21	Hernandez	client call	340.00	0.70		238.00
8/25/21	Hernandez	drafting NMF	340.00	1.50		510.00
8/26/21	Hernandez	MSJ outline	340.00	2.00		680.00
10/13/21	Hernandez	rsch standing 1 call N. Shoaff/M. Hornbein re same .5, email clients re same 1,	340.00	2.50		850.00
10/14/21	Hernandez	rsch MSJ .3, .5, 1, 2, 1	340.00	4.80		1,632.00
10/15/21	Hernandez	drafting MSJ .5, .6	340.00	1.10		374.00
10/17/21	Hernandez	drafting MSJ br re ind eff	340.00	5.00		1,700.00
10/18/21	Hernandez	drafting MSJ 1, call AC re record .1; drafting 1.9, 1, .9, 1.5	340.00	6.40		2,176.00
10/20/21	Hernandez	call N. Shoaff .5 re MSJ Br	340.00	0.50		170.00
10/21/21	Hernandez	call N. Shoaff/M. Hornbein .5	340.00	0.50		170.00
10/23/21	Hernandez	editing/drafting MSJ Br 3.8	340.00	3.80		1,292.00
10/24/21	Hernandez	drafting/editing MSJ Br 3.2	340.00	3.20		1,088.00
10/25/21	Hernandez	drafting/editing MSJ Br 1.7, 3.2	340.00	4.90		1,666.00
10/28/21	Hernandez	editing/drafting MSJ 1.5, 2, 1, 1, 1	340.00	6.50		2,210.00
10/29/21	Hernandez	editing MSJ br 1, 1, 1	340.00	3.00		1,020.00
12/16/21	Hernandez	call re oa	340.00	0.50		170.00
1/7/22	Hernandez	call press (1)	350.00	1.00	1.00	-
1/19/22	Hernandez	reviewing/drafting resp reply br 1, 2.5, 2.2	350.00	5.70		1,995.00
1/22/22	Hernandez	drafting resp reply ind eff 4, 4	350.00	8.00		2,800.00
1/23/22	Hernandez	drafting resp(reply ind effects	350.00	3.00		1,050.00
1/31/22	Hernandez	drafting resp(reply 1.5, 2, 1	350.00	4.50		1,575.00
2/1/22	Hernandez	drafting/editing resp(reply MSJ 1,1.5, .5, .5	350.00	3.50		1,225.00
2/2/22	Hernandez	editing/drafting resp(reply MSJ 1.4, 1.4, 2, 1.3	350.00	6.10		2,135.00
2/4/22	Hernandez	finalizing/filing reply in sup of MSJ	350.00	4.50		1,575.00
2/28/22	Hernandez	call N. Shoaff/M. Hornbein re motion for remand	350.00	0.50	0.20	105.00
3/2/22	Hernandez	researching vol remand	350.00	2.20		770.00
3/3/22	Hernandez	rsch mot for vol reman 1, 4	350.00	5.00		1,750.00
3/4/22	Hernandez	rsch vol remand 1.3, 2, 3.3, 1	350.00	7.90		2,765.00
3/6/22	Hernandez	drafting resp to petition for remand	350.00	2.00		700.00
3/7/22	Hernandez	drafting resp to mot to remand .6, 2.5, .2, 3, 1	350.00	7.30		2,555.00
3/8/22	Hernandez	drafting resp to mot for remand 1, 3.6	350.00	4.60		1,610.00
3/9/22	Hernandez	drafting FOIA to BLM re sturgeon 1.7, drafting resp to mot to remand 3, 3	350.00	7.70	1.70	2,100.00
3/9/22	Hernandez	editing vol remand br	350.00	3.00		1,050.00
3/10/22	Hernandez	drafting FOIA re sturgeon	350.00	1.50	1.50	-
3/11/22	Hernandez	moot	350.00	1.00		350.00
3/14/22	Hernandez	oral argument, travel 3.8, argument 2.2, debrief 1.5, travel home 3	350.00	10.50		3,675.00
8/9/22	Hernandez	email re case results	350.00	4.50	4.20	105.00
10/30/22	Hernandez	Drafting RMP comments	350.00	1.00	1.00	-

Date	Attorney	Description	Rate	Time	Omit	Amount
11/1/22	Hernandez	Drafting reviewing cmts on RMP	350.00	4.00	4.00	-
		For Professional Services: Shiloh Hernandez		255.20	30.70	76,818.00

Total Hours	255.20
Total Hours Omitted	30.70
Total Hours after Omisions	224.50

Total Attorneys' Fees \$ 76,818.00